
(1895) 04 MAD CK 0023
In the Madras High Court

Subbaramayyar		APPELLANT
	Vs	
Nigamadullah Saheb and Others		RESPONDENT

Date of Decision : 22-04-1895

Acts Referred:

Citation : (1895) ILR (Mad) 342

Hon'ble Judges : Subramania Ayyar, J;Best, J

Bench : Division Bench

Judgement

1. The plaintiff sues for recovery of Rs. 10,628,, principal and interest said to be due to him upon a mortgage bond executed on the 19th June 1888 by one Nidashah, deceased, and the first defendant jointly for Rs. 5,000.
2. The defendants Nos. 2 to 5 have been made parties as being persons in possession of or claiming interest in the village of Ponmanatham mortgaged under the document sued on.
3. The first defendant admitted the plaintiff's claim. The second and third defendants contested the suit. Seven issues were raised [3^4] and evidence was adduced by the parties on the various questions in controversy between them.
4. The Subordinate Judge dismissed the plaintiff's claim on the ground that the bond sued on and the previous transactions which led up to it were unsupported by any consideration, and had been got up collusively in the names of the plaintiff and certain others who are his relations by the plaintiff's seventh witness, Subramania Ayyar, formerly the agent of Nidashah.
5. The plaintiff appeals and the important question for our determination is whether the plaintiff is entitled to proceed against the mortgaged

property. We think that he is not; for, we find that the defendants Nos. 2 and 3 held, as pleaded by them, possession of the village in question

adversely to Nidashah through whom the plaintiff and the first defendant claim, for more than the statutory period prior to the date of the bond

sued upon ; and that, consequently, neither Nidashah nor the first defendant had any right at the time the bond was executed to mortgage the

village so as to bind it in the hands of the second and third defendants.

6. Issues Nos. 3 and 4 taken together raise the point under consideration. The Subordinate Judge did not formally record a finding upon the third

issue regarding possession. But in dealing with the question whether there was consideration for the bond, he has fully discussed the evidence on

the question of possession also, and arrived at the conclusion that the village in dispute was never in the occupation of Nidashah or the first

defendant after it was handed over by the former to the second defendant in January 1871 under Exhibit II, and that the second and third

defendants have ever since held the property claiming to be entitled thereto under it.

7. Up to the execution of this document (Exhibit II), Nidashah was admittedly the manager of a Mahomedan religious institution called Thas Brak

Thaikal in Tiruvalur. He held the village in question, which forms part of the endowments belonging to that institution, with the rest of the properties

attached to the Thaikal. Being very old and infirm Nidashah executed on the 11th January 1871, Exhibit II, to the second defendant, his nephew,

authorizing the latter to take possession of the Thaikal and its properties on behalf of the third defendant, who is second defendant's son. The

instrument after reciting that Nidashah had taken the third defendant in adoption and had brought him up as his son, provides that the second

defendant should assume the management of the Thaikal and its properties on behalf of the third defendant, who was then a minor, receive the

rents and profits accruing from the endowments and account for the same to the third defendant when he becomes a major. Under this document

the second defendant entered into possession at once, and continued to manage the properties without any dispute for some time. In 1873 quarrels

appear to have arisen between Nidashah and the second defendant. The following year Nidashah issued notices purporting to cancel the

arrangement made under Exhibit II and stating that he had resumed the management. The second defendant, however, resisted these attempts to interfere with his possession of the Thaikal and its endowments including the village in question. It is admitted on behalf of the plaintiff that the second defendant held possession from 1871 till the end of 1884. But it is urged on his behalf that in 1885, the second defendant voluntarily restored the village to Nidashah who held it till his death in November 1888. The second and third defendants deny this alleged restoration, and contend that they have been in uninterrupted possession not only from 1871 up to 1885, but also subsequently to the present time. The story of surrender by the second and third defendants to Nidashah in 1885 was discredited by the Subordinate Judge and, we think, rightly. From the time quarrels arose in 1873 between Nidashah and the second defendant various judicial proceedings to which it is unnecessary to refer here in detail were set up and conducted at the instigation of Nidashah or his adherents, for the purpose of depriving the second and third defendants of their possession and management of the Thaikal and its properties. It is not denied that the latter succeeded in maintaining their possession for ten or eleven years after the dispute began. No adequate explanation is assigned for their voluntarily giving up the village--which forms the most important portion of the endowments--after having kept it for so long a period. And the reason given for such alleged conduct on their part is that when the third defendant made in 1882 a claim to certain produce of the value of Rs. 30, attached at the instance of a person who had obtained a decree against Nidashah, and such claim was disallowed by the Courts, he and second defendant came to believe that they had lost their rights and consequently gave up possession to Nidashah. This is an incredible story and is opposed to the weight of evidence in the case. There is no doubt that one Annasami Vandayar who held the village under Exhibit VII as lessee of the second and third defendants enjoyed the village up to July 1884 when the term of that lease expired. In that month the third defendant leased the village to the plaintiff's fifth witness under Exhibit I for nine years. But in January 1885 one Sivasankaram Pillai claiming to be the lessee of Nidashah and the first defendant under Exhibit J, dated May 1884, tried to interfere with the enjoyment of the plaintiff's fifth witness, who, either because he was unwilling to involve himself in such a dispute, or

because his brother Narayanasami Vandayar had joined Nidashah (see Exhibit K) relinquished under Exhibit L, dated the 5th January 1885, his

(the fifth witness) rights as lessee. Thereupon the third defendant at once granted the village on lease under Exhibit VIII for three years to the

defendants' fourth witness and others who were able to overcome the opposition of Nidashah and the first defendant and their agents. The

evidence clearly shows that these new lessees enjoyed the village for the whole period of their lease, and that neither Nidashah nor the first

defendant nor anybody else on their behalf succeeded in regaining possession. The evidence of the defendants' fourth witness, one of the parties

that had possession under Exhibit VIII between 1885 and 1888 is corroborated by that of the karnam and pattamanigar of the village, who further

prove that the assessment due to Government was paid by the second and third defendants. This is not met by any reliable evidence on the part of

the plaintiff. The testimony of Subramania Ayyar, the plaintiff's seventh witness, who is the plaintiff's relation, is entirely unsupported on this point.

He says that Sivasankaram Pillai to whom Exhibit J was executed enjoyed for one year and Narayanasami Vandayar, his sub-lessee, for the

remaining two years of the lease. But neither of them was called by the plaintiff. The evidence of the defendants' fifth witness is equally

unsatisfactory.

8. We have no hesitation therefore in coming to the conclusion that the defendants Nos. 2 and 3 were in adverse possession of the village in

question from 1871, that Nidashah's right thereto was extinguished by lapse of time and neither he nor the first defendant had in 1888 when

Exhibit A was executed, any right to mortgage it to the plaintiff: see *Balwant Rao Bishwant Chandra Chor v. Punm Mai Ghaube* L.R. 10 IndAp 90

and *Jagan Nath Das v. Birbhadra Das* ILR 19 Cal. 776; also *Karimshah v. Nattan Bivi* ILR 7 Mad. 417 and *Sunkaran v. Krishna* ILR 16 Mad.

456. In this view it is unnecessary for us to consider the contention urged on behalf of the second and third defendants that the debt for which

Exhibit A is said to have been executed was incurred for purposes binding upon the institution.

9. The appeal is dismissed with costs.